

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

United States of America,	)	CR No. 3:09-714-CMC
	)	
	)	<b>OPINION and ORDER</b>
v.	)	
	)	
Dwayne Roderick Ross,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the court on Defendant’s *pro se* motion for relief from judgment. ECF No. 295. Defendant contends that based upon evidence introduced at the evidentiary hearing held May 16, 2013, he is entitled to relief from judgment based upon his counsel’s alleged “collu[sion]” Mot. at 3, with the Government. He seeks the reopening of his previously-denied motion for relief under 28 U.S.C. § 2255 to include an additional claim of ineffective assistance of counsel.

Defendant’s motion is, in reality, a second or successive motion for relief under 28 U.S.C. § 2255. Section 2255 permits a second or successive motion to be authorized by the appropriate Court of Appeals if it contains “newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense.” 28 U.S.C. § 2255(h)(1). Therefore, if Defendant has newly discovered, truly persuasive evidence of his innocence, § 2255 provides a vehicle for testing the validity of that evidence and determining if it is sufficient to permit a successive § 2255 motion.

Prior to filing a second or successive petition under § 2255, Defendant must obtain certification by a panel of the Fourth Circuit Court of Appeals allowing him to file a second or

successive petition. As provided in 28 U.S.C. § 2244, “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A).

The requirement of filing a motion in the Fourth Circuit Court of Appeals for permission and securing permission to file a second or successive motion is jurisdictional. Therefore, Defendant’s failure to secure permission from the Fourth Circuit Court of Appeals prior to filing this § 2255 motion is fatal to any action in this court. Accordingly, this motion is dismissed as this court is without jurisdiction to consider it.

This motion is dismissed as this court is without jurisdiction to consider it.

#### **CERTIFICATE OF APPEALABILITY**

The governing law provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable jurists would find this court’s assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, a certificate of appealability is **denied**.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
SENIOR UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
March 6, 2014